[redacted]

DEPUTIES' MEETING, 9 JANUARY 1962

25X1A9A

ACTION MEMORANDUM #7

TO: Colonel White [redacted]

At the meeting this morning, the Director referred to the recent Attorney General's opinion dealing with conflict of interests by members of advisory boards and committees to various Federal agencies. He made specific mention of the CIA Research Board as illustrative of a board whose members may have conflicts of interest which would preclude their service to the Agency under the Attorney General's ruling. The Director asked that all such relationships which the Agency has be examined carefully in order to determine what action might be necessary to comply with the ruling of the Attorney General.

The DCI was advised that the General Counsel and a member of the IG Staff are already working on this problem and should be in a position to make recommendations within the relatively near future.

[redacted] 25X1A9A

[redacted]

Assistant to the Director

cc: Mr. Larry Houston
Mr. Bissell
Mr. Amory

I did not say this — only first half of sentence — DM

May 9 3o. Tue.

ADVISERS FACING FINANCIAL QUERY

Pentagon Studies New Curb on Conflicts of Interest

By JOHN W. FINNEY
Special to The New York Times.

WASHINGTON, Jan. 9—The Defense Department is considering strengthening its conflict-of-interest regulations by requiring its scientific advisers to list their private financial interests.

At present, members of the Defense Science Board and the similar advisory committees of the three military services are not required to describe their nongovernmental activities. These include consulting jobs with industry and the like.

The result, as Pentagon officials acknowledged, is that the Defense Department and the military services have had no direct way of checking on whether the scientist in his advisory role is being drawn into a potential conflict of interest with his nongovernmental activities. The responsibility for avoiding such a situation has rested almost entirely on the individual scientist rather than on the Government.

As explained by defense officials, this "honor system" dates back to a day when the advisers were primarily scientists engaged in university research and the prevailing concept was that what they did no their private time was their own business.

With the increasing Government support of research in recent years, Government and private scientific research have become intermingled. Moreover, university scientists have found themselves in high demand as consultants to Government contractors, partly because of the influential, informed position they hold as Government advisers.

The members of the defense and military science advisory groups have been drawn principally from two groups: university professors who frequently hold several consulting jobs with industry and scientists employed by defense contractors.

Regulations Under Review

Defense officials have initiated in recent days a review of the conflict-of-interest criteria and regulations governing scientific advisers.

HEADS SURVEY GROUP: Karl R. Bendetsen, who will serve as chairman of committee to assess U. S. troop indoctrination programs.

an adviser to an agency could violate the law by merely serving as a consultant to an agency contractor, even though there was no actual abuse of the dual status.

The Defense Department is now holding up an Air Force decision to appoint Dr. H. Guyford Stever, Professor of Aeronautics and Astronautics at the Massachusetts Institute of Technology, as chairman of the Air Force Scientific Advisory Board until a review can be made of the conflict-of-interest problem. One tpossible step under consideration is to require Dr. Stever to drop some of his consulting jobs with defense contractors as a condition of being named chairman of the committee.

8 January 1962

MEMORANDUM FOR THE RECORD

SUBJECT: Possible Conflicts of Interest - TSD Panel

1. Larry Houston telephoned and referred to his previous discussion of possible conflicts of interest involving Agency consultants whose firms also held Agency contracts.

2. Houston said that TSD had a scientific advisory panel whose members had submitted pro forma resignations when CIA got a new Director. All members were perfectly willing to continue if reappointed and [redacted] Chief, TSD, recommended their reappointment to Mr. McCone. DCI would like to reappoint the entire panel, but before doing so wants to be assured that there is no conflict of interest.

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3. Larry Houston is to hear from [redacted] and get a few basic facts. After that Houston will name one of his lawyers to work with [redacted] Although the general problem of conflicts of interest is much broader, we should try to reach some decision on the TSD panel promptly since its reappointment is pending in the Director's office.

25X1A9A

[redacted]

25X1

cc: [redacted]

PENTAGON STUDIES 'CONFLICT' RULING

Justice Department Opinion May Force Restrictions on Scientific Advisers

By JOHN W. FINNEY
Special to The New York Times.

WASHINGTON, Jan. 6—The Defense Department is being forced to reconsider its conflict-of-interest regulations covering scientific advisers because of its discovery of a three-year-old legal opinion by the Justice Department.

Defense officials acknowledged today that to comply with the Justice Department interpretation of the regulations the Pentagon might be compelled to impose greater restrictions.

The Justice Department's interpretation of the application of the conflict-of-interest laws to scientific advisers and industry consultants is much stricter than the opinion and practice that has prevailed in regulating the numerous scientific advisory committees in the Pentagon.

Activities Limited

Basically, the Justice Department's position is that a scientific adviser to a Government agency cannot serve as an employe or consultant to a private concern doing research sponsored by the agency.

The Defense Department's position has been that such outside interests and activities of the scientific advisers were permissible. One limitation imposed by the Defense Department was that the adviser disqualify himself from considering any matter, such as project or contract, in which he had a direct inter-

Continued ge 33, Column 1

PENTAGON STUDIES 'CONFLICT' RULING

Continued From Page 1, Col. 7

est as a private consultant or employe.

The Justice Department's interpretation was given in an opinion written in March, 1959, in response to an inquiry from the Atomic Energy Commission. The agency wanted a ruling on the legality of letting members of its General Advisory Committee serve as consultants to commission industrial contractors.

The department's answer was that such a dual advisory role would present a possible violation of the conflict-of-interest laws.

Defense legal officials said the department had been unaware of the Justice Department ruling until it was referred to this week in an article in The New York Times describing the strict rules imposed by the Atomic Energy Commission on its principal scientific advisers. Pentagon legal officials called the commission's legal office for a copy of the opinion.

Would Have Repercussions

Aparently the reason the Defense Department never received the ruling is that it never asked the Justice Department for an opinion on the applicability of the conflict-of-interest laws to scientific advisers. According to informed sources, the Defense Department considered asking for an opinion several months ago but decided not to for fear of what the answer might be.

If the ruling was applied throughout the Government, it would have profound repercussions on the prevalent practice of recent years whereby scientists, particularly from universities serve as advisers to the Government and consultants to industry.

The objective of the Justice Department's position is to prevent the scientists from using the influence or inside information they obtain as Government advisers to benefit their private interests. But on the other side of the problem is the question of how the Government can obtain the needed advice and assistance of non-Governmental scientists if strict conditions are imposed on their outside interests.

Now that the Justice Department's interpretation has been brought to their attention, defense officials said, they are reexamining their regulations and policy governing scientific advisers. There is a possibility, they said, that the Defense Department will go to the Justice Department for an opinion on the applicability of the conflict-of-interest laws to defense scientific advisers.

Legal officials within the Administration see little likelihood that the Justice Department will make any substantial modification in the opinion it gave to the Atomic Energy Commission. The opinion was drafted in the department's Office of Legal Counsel, which has traditionally placed the strictest interpretation on conflict-of-interest situations.

Officials recalled that the Office of Legal Counsel kept the Dixon-Yates power case alive and eventually won it on the conflict-of-interest issue. Sor Goverfnment lawyers see a clo legal parallel between the a viser situation and the issue the Dixon-Yates case, in whi Adolphe Wenzell was serving an unpaid consultant to t Budget Bureau while he w vice president of the First Bo ton Corporation.

The Dixon-Yates case i volved the construction of steam plant to feed energy in the Tennessee Vally Authori system.

Two Cases Differ

Defense officials pointed o that the facts in the Atom Energy Commission situati were somewhat different fro those in the defense adviso committees. The commissior General Advisory Committ passes specific projects, but t defense committees do not co sider contract proposals.

SECRET

Conflict of Interest and Scientific Advisors.

The 1959 D. of J. legal opinion to AEC came while Mr. McCone was Director? We should check with

OSI
COMMO
TSD
DPD

See par. 2 of NY Times clipping, 5 Jan.

Matter has become specific with DCI holding up a paper on TSD Scientific Advisory Panel until he is advised that there is no conflict of interest with any of them.

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L. Houston on 8 Jan: Has talked with [redacted]; feels that
25X1A9A a few of his panel will be affected. GOC man who will work with me on this i[redacted]

25X1A9A

Per [redacted] 9 Jan: At staff meeting to-day DCI mentioned matter. Amory said the Decision would not affect any DDIers, since all are used as individuals, rather than as panel.
Bissell: TSD will have trouble.

RS

SECRET

A.E.C. Restricting Scientific Advisers In Industry Roles

By JOHN W. FINNEY
Special to The New York Times.

WASHINGTON, Jan. 4—The Atomic Energy Commission, on the advice of the Justice Department, is enforcing a strict conflict-of-interest policy limiting the private consulting activities of its scientific advisers.

The commission has ruled that the scientists on its General Advisory Committee cannot act as consultants to private concerns doing research work sponsored by the commission.

The commission's position, first adopted in 1959 and reaffirmed in recent weeks, was based on an advisory opinion from the Justice Department that such a dual advisory role in the Government and in private industry would probably present a violation of the conflict-of-interest laws.

The commission's position on the conflict-of-interest laws that apply to scientific advisers is far stricter than that being followed by other Government agencies, the Defense Department in particular.

General's Case Noted

For example, officials said that under the commission's interpretation of the laws, Lieut. Gen. Donald L. Putt, retired, would not have been able to serve as chairman of the Air Force Scientific Advisory Board and president of the United Technology Corporation, a West Coast rocket concern doing research work for the Air Force.

The Air Force announced over the week-end that General Putt had requested that he not be reappointed as chairman of the Scientific Advisory Group.

An extension of the commission's interpretation and the

Continued on Page 11, Column 3

A.E.C. CURBS AIDES IN PRIVATE WORK

Continued From Page 1, Col. 6

Justice Department opinion to all Government agencies, limiting the prevalent practice of scientists' serving both as advisers to the Government and as consultants to private industry, would affect the Government's ability to attract scientific advisers. As one Defense Department official put it:

"Under the commission interpretation, we would be denuded of our scientific consultants."

Access to Information

The commission's position was adopted, unde rosme urging from the Joint Congressional Committee on Atomic Energy, to prevent the agency's scientific advisers from being able to use their inside information and influence to benefit their industrial employers.

Commission officials reported that members of the General Advisory Committee were in high demand as industrial consultants, with the offered fees ranging as high as $1,000 a day. Commission officials believe that one reason industry is willing to pay such high fees is to obtain advice on the trend of commission research programs.

The commission position grew out of a request by one member of the General Advisory Committee to serve as a consultant to the General Dynamics Corporation on a reactor project that would receive commission research assistance. It was reaffirmed in recent weeks when the same adviser asked the commission if it would be permissable for him to join the nuclear science advisory committee of the United Aircraft Corporation and advise on a high-temperature, lithium-cooled reactor that the company was developing under a commission contract.

Violation Held Possible

In both cases, the commission ruled that the consulting jobs would present a possible violation of a section in the Criminal Code (Section 281), which bars Federal employes from being compensated in relation to any contract or other arrangement in which the Government has a direct or indirect interest.

The section was originally designed to discourage a Governmental official from receiving kickbacks or using his position to further a nongovernmental interest. The commission also decided it applied to scientific advisers on the ground that by becoming advisers they assumed the status of Government employes.

Behind the commission's position is an advisory opinion given in March, 1959, by Malcolm R. Wilkey, then an Assistant Attorney General. It was offered in response to a commission request on the applicability of conflict-of-interest laws to scientific advisers who served as industrial consultants.

The opinion held that Section 281 of the Criminal Code "apparently would prohibit an advisory committee member from receiving or agreeing to receive compensation for any services rendered or to be rendered, either by himself or another, in relation to any particular matter which directly involves the commission or in which the commission is directly interested."

Disqualification Discussed

The Wilkey opinion held that a scientific adviser would not necessarily avoid violation of the conflict-of-interest statutes by disqualifying himself from considtring as a Government committee member any matter in which he had received compensation from a private concern. This is contrary to the position of defense officials.

"It is the receipt of compensation which is condemned by Section 281," the opinion said. Disqualification, it continued, is relevant only to the extent that it "would limit the opportunity for the member to use the influence or prestige of his office as an advisory committee member" to benefit his private employer and is "necessary to avoid an actual conflict of interest."

The opinion held, however, that there need not necessarily be an actual abuse of official position to pose a violation of the conflict-of-interest laws.

It pointed out that courts "have not hesitated to apply the statute to factual situations which do not involve any actual wrongdoing but which present an obvious opportunity for the wrongdoing which the statute was enacted to prevent —the use of public office to advance a private interest."

The criterion, therefore, the opinion said, "is whether the consultant services in question afforded an opportunity to the advisory committee member to make use of his Government office to advance the interests of his company."

If such an opportunity exists for misuse of public office, the opinion concluded, it is sufficient to raise the possibility of a violation of the conflict-of-interest laws.

CRIMES AND CRIMINAL PROCEDURE
Title 18, USCA, section 434

"Interested persons acting as Government agents

"Whoever, being an officer, agent or member of, or directly or indirectly interested in the pecuniary profits or contracts of any corporation, joint-stock company, or association, or of any firm or partnership, or other business entity, is employed or acts as an officer or agent of the United States for the transaction of business with such business entity, shall be fined not more than $2,000 or imprisoned not more than two years, or both."

STAT

CRIMES AND CRIMINAL PROCEDURE
Title 18, USCA, section 281

"Compensation to Members of Congress, officers and others in matters affecting the Government

"Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

"This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by Act of Congress. As amended May 24, 1949, c. 139 § 6, 63 Stat. 90."

CRIMES AND CRIMINAL PROCEDURES
Title 18, USCA, section 216

"Procurement of contract by officer or Member of Congress

"Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or being an officer, employee, or agent of the United States, directly or indirectly takes, receives, or agrees to receive, any money or thing of value, for giving, procuring or aiding to procure to or for any person, any contract from the United States or from any officer, department or agency thereof; or

"Whoever, directly or indirectly, offers, gives, or agrees to give any money or thing of value for procuring or aiding to procure, any such contract--

"Shall be fined not more than $10,000 or imprisoned not more than two years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

"The President may declare void any such contract or agreement."

CRIMES AND CRIMINAL PROCEDURE
Title 18, USCA, section 283

"Officers or employees interested in claims against the Government

"Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

"Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any such retired officer within two years next after his retirement to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status, or to allow any such retired officer to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active-duty status.

"This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by enactment of Congress. As amended June 28, 1949, c. 268, § 2(b), 63 Stat. 280."

CRIMES AND CRIMINAL PROCEDURE
Title 18, USCA, section 284

"Disqualifications of former officers and employees in matters connected with former duties

"Whoever, having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, within two years after the time when such employment or service has ceased, prosecutes or acts as counsel, attorney, or agent for prosecuting, any claims against the United States involving any subject matter directly connected with which such person was so employed or performed duty, shall be fined not more than $10,000 or imprisoned not more than one year, or both. As amended May 24, 1949, c. 139, § 7, 63 Stat. 90."

CRIMES AND CRIMINAL PROCEDURE
Title 18, USCA, section 1914

"Salary of government officials and employees payable only by United States

"Whoever, being a Government official or employee, receives any salary in connection with his services as such an official or employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

"Whoever, whether a person, association, or corporation, makes any contribution to, or in any way supplements the salary of, any Government official or employee for the services performed by him for the Government of the United States --

"Shall be fined not more than $1,000 or imprisoned not more than six months, or both. June 25, 1948, c. 645, 62 Stat. 793."

THE ATOMIC ENERGY ACT OF 1954
Section 163

"Sec. 163. ADVISORY COMMITTEES. -- The members of the General Advisory Committee established pursuant to section 26 and the members of advisory boards established pursuant to section 161 a. may serve as such without regard to the provisions of sections 281, 283, or 284 of Title 18 of the United States Code, except insofar as such sections may prohibit any such member from receiving compensation in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested."

THE ATOMIC ENERGY ACT OF 1954
Section 26

"Sec. 26. GENERAL ADVISORY COMMITTEE. -- There shall be a General Advisory Committee to advise the Commission on scientific and technical matters relating to materials, production, and research and development, to be composed of nine members, who shall be appointed from civilian life by the President. Each member shall hold office for a term of six years, except that (a) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (b) the terms of office of the members first taking office after August 1, 1946, shall expire, as designated by the President at the time of appointment, three at the end of two years, three at the end of four years, and three at the end of six years, after August 1, 1946. The Committee shall designate one of its own members as Chairman. The Committee shall meet at least four times in every calendar year. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee."

THE ATOMIC ENERGY ACT OF 1954
Section 161a

"Sec. 161. GENERAL PROVISIONS. -- In the performance of its functions the Commission is authorized to --

"a. establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

"b. ... "

THE RECORD

OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

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Conflict-of-Interest Laws

I

INTRODUCTION AND SHORT SUMMARY

We are today releasing a pre-publication edition of a Report based upon more than two years of study of the so-called "conflict-of-interest" laws of the Federal Government. Also, we expect that there will be introduced today in both Houses of Congress a proposed "Executive Conflict-of-Interest Act," which has been drafted by this Committee and which is designed to remedy the manifold defects of the present law. Our findings and recommendations, which are set forth in the Report, are expressed in statutory form in the proposed Act.

The Report will be published in the summer by the Harvard University Press.

This Committee is issuing this pre-publication mimeographed edition of its Report so that it will be available at the public hearings on the topic of the conflict-of-interest laws which commenced on February 17, 1960, before the Antitrust Subcommittee of the Committee on the Judiciary of the House of Representatives. The House Judiciary Committee, under the Chairmanship of Representative Emanuel Celler of New York, has already made an important contribution to the wider understanding and improvement of this confused, but crucial, area of law and public administration. The public hearings, which have just opened, should further advance the cause of urgently needed reform. Accordingly, we have distributed some two hundred mimeographed copies of a pre-publication edition of the Report to members of Congress, the press and to various Federal departments and agencies.

This Official Summary has been prepared for the information

Editor's Note: Printed here is the text of the official summary of the Report of the Association's Special Committee on the Federal Conflict-of-Interest Laws, Roswell B. Perkins, Chairman. The pre-publication edition of the Report and this summary were made public on February 23, 1960. The full Report of the Committee will not be available until summer when it will be published by the Harvard University Press.

it may be possible for both the strikers and their replacements to vote.

Strictly construed, this amendment would make it possible for 100 economic strikers and the 100 employees who had replaced them permanently, to vote in the election, even though the strikers were no longer employees and had no future stake as such in the results.

(b) *Filing Requirements*

The requirement that union officers file non-communist affidavits as a condition of using the procedures of the N.L.R.B. has been repealed.

Instead, the new law prohibits ex-communists and certain ex-criminals from representing management or labor for a period of five years after termination of communist party membership or of the prison sentence, as the case may be.

CONCLUSION

The new Federal Labor Law ("Landrum-Griffin") contains within itself perhaps more problems than it attempts to solve. It will be several years before the full meaning of various of its provisions is determined in the course of litigation.

In the meantime, it is hoped that this summary will alert members of the bar to some of the rights and duties under the law.

and guidance of those interested persons to whom the Report is not available and as a guide to the Report.

A. OBJECTIVES

The Report of the Committee has two themes. The first is that ethical standards within the Federal Government must be beyond reproach, and that there must, accordingly, be effective regulation of conflicts of interest in Federal employment. The second is that the Federal Government must be in a position to obtain the personnel and information it needs to meet the demands of the Twentieth Century.

These themes are coequal. Neither may be safely subordinated to the other. What is needed is balance in the pursuit of the two objectives. We need a long-run national policy which neither sacrifices Governmental integrity for opportunism nor drowns practical staffing needs in moralism. We need a careful regulatory scheme that effectively restrains official conflicts of interest without generating pernicious side effects on recruitment.

The basic conclusion of the Committee is that such a scheme can be worked out. The Report and the proposed Act contain a recommended new program for achieving this result.

B. ASSESSMENT OF EXISTING RESTRAINTS

The Committee has concluded that the legal and administrative machinery of the Federal Government for dealing with the problem of conflicts of interest is obsolete, inadequate for the protection of the Government, and a deterrent to the recruitment and retention of executive talent and some kinds of needed consultative talent.

1. *Obsolescence*

The statutory law—most of it a century old—is not broad enough to protect the Government against the manifold modern forms of conflict of interest. Most of the statutes were and are pointed at areas of risk that are no longer particularly significant,

mainly the prosecution of Government claims. Today, with the greatly expanded regulatory functions of the Federal Government, applications for rulings, clearances, approvals, licenses, certifications, grants and other forms of Government action are far more significant in the daily operation of Government than the prosecution of claims. Several of the basic statutes now on the books do not concern themselves at all with these modern Governmental activities.

Other aspects of obsolescence in the present statutes are:

(a) Their focus of interest upon a class of lower ranking politically appointed clerks that has disappeared. The Government today obtains its manpower through a vast civil service, a top layer of short term political appointees, an increasing group of advisory and part time personnel, and through an unlimited variety of contracts for services provided by non-Government personnel.

(b) Their failure to recognize internal procedures of modern Government, such as the flexible processes of personnel administration available to assist in enforcement.

(c) Their lack of recognition of the facts of modern economic life, such as the existence of private pension plans.

(d) Their failure to recognize the essential blending of public and private endeavor in the modern American society, as illustrated by the partnership of government, industry and educational institutions in the science field.

2. *Inadequate administration*

Partly by reason of the deficiencies in the statutory law, administration of the conflict-of-interest restraints has always been weak. The Government has failed to provide a rational, centralized, continuing and effective administrative machinery to deal with the problem. If the statutes presented a coordinated whole—a unified program—and if they imposed direct responsibility on the President to carry out that program, the central coordination

and leadership missing in the past would improve. A well-administered program could, and should guide the thousand good men as well as snare the one bad one.

3. *Uncertainty in interpretation*

Enacted fitfully over a 100-year span, the uncoordinated statutes are inconsistent, overlapping and at critical points defy interpretation.

4. *The Congress*

Congress has done a useful and constructive job in its capacity as investigator. But the Senate confirming committees have seldom considered the overall issue of conflict of interests in relation to recruitment. The Armed Services Committee has applied a wavering standard of stock divestment, useful for certain purposes, but overemphasizing one single source of conflict-of-interest problems and having little bearing on the question of actual official conduct.

5. *Recruitment*

The main adverse effect of the present system is its deterrent effect on the recruitment and retention of executive talent and some kinds of consultative talent. The restrictions tend to encircle the Government with a barricade against the interflow of men and information at the very time in the Nation's history when such an interflow is most necessary.

C. RECOMMENDATIONS

The defects in the present law cannot be cured by tinkering. A thorough-going reconstruction is called for—a new program of controls designed for modern needs, providing for adequate administration and written as an integrated unit. The program must achieve a balance between the Nation's need for protection against conflicts of interest and its need for personnel.

The Committee's basic recommendations are these:

1. "Conflict-of-interest" problems should be recognized and

treated as an important, complex, and independent subject of attention and concern in the management of the governmental establishment.

2. The present scattered and uncoordinated statutes relating to conflicts of interest should be consolidated into a single unified Act, with a common set of definitions and a consistent approach. Archaic provisions should be repealed.

3. The restraints contained in the present statutes should be greatly expanded in their scope by making them applicable to essentially all matters in which the public deals with the modern Federal Government.

4. Certain important restraints now covered in regulations or not at all should be included in the basic statutes, particularly restraints relating to receipt of gifts and coercive use of office.

5. The statutes should permit the retention by Government employees of certain security-oriented economic interests, such as continued participation in private pension plans.

6. Wherever it is safe, proper and essential from the viewpoint of recruitment, the statutes should differentiate in treatment between regular employees and citizens who serve the Government only intermittently, for short periods, as advisers and consultants.

7. Regular, continuing and effective enforcement of the law and regulations should be assured by emphasizing administrative remedies, rather than the clumsy criminal penalties of present law.

8. The statutes should create the framework for active and effective administration of the system of conflict-of-interest restraints, headed up with clear responsibility in the President. The President should designate, pursuant to the proposed Act, an Administrator to assist him in this function.

9. In addition to the statutes themselves, there should be a "second tier" of restraints, consisting of Presidential regulations amplifying the statutes, and a "third tier," consisting of agency regulations tailored to the needs of particular agencies. The responsibility for day-to-day enforcement of the statutes and regulations should rest upon agency heads.

10. At all levels of administration potential conflict-of-interest problems should be headed off by preventive action, such as, for example, orientation programs for all new employees to acquaint them with the applicable conflict-of-interest rules, and periodic reminders as to such rules.

11. There should be more effective prohibitions and penalties applicable to persons outside Government who induce or participate in conduct by Government employees in violation of the conflict-of-interest laws.

12. Each committee of the Senate considering a Presidential nominee for confirmation should be given the benefit of a full analysis, prepared by the Administrator in consultation with the Department of Justice, of any conflict-of-interest problems the nominee's particular situation may present. The confirming committee should give due consideration to this analysis and to the protections afforded by a modern and effectively administered overall scheme of conflict-of-interest restraints, if one is put into effect.

13. The Congress should initiate a thorough study of the conflict-of-interest problems of members of Congress and employees of the legislative branch of the Federal Government.

* * *

The program advanced here will not "solve" the problem of conflict of interests in Federal employment. Like most real problems, this is one we must live with permanently, strive to mitigate, and adjust to. The program proposed, however, will do several things.

It meets the flaws of the present pattern of conflict-of-interest restraints—obsolescence, weakness of administration and faulty drafting. It would greatly strengthen the main policy of the conflict-of-interest statutes—preservation of the integrity of Government. It would provide for an integrated and comprehensible system of standards and sanctions, together with an effective machinery for administering that system. It is grounded upon a realistic conception of the problem of conflicting interest as it appears

in the modern setting of American government and society. It would make a significant contribution toward intelligent staffing of the Federal government for world leadership.

II

MORE DETAILED STATEMENT OF THE PROGRAM

The Committee recommends a thorough reconstruction of the entire legal and administrative machinery for dealing with the problem of conflict of interest in the Executive Branch of the Government. A summary of its principal recommendations appears below:

RECOMMENDATION 1

"Conflict-of-interest" problems should be recognized and treated as an important, complex, and independent subject of attention and concern in the management of the governmental establishment.

Up until the present time, the subject of conflict of interest in the Executive Branch has been conceived of and dealt with only peripherally as an aspect of the general problem of ethics in Government. The fact is that its unique and complex nature and the variety of difficult problems it raises, particularly the problem of recruitment, demands that it be isolated and identified as an independent subject of Government concern. Until it receives the consideration and attention which it deserves, the problem of conflict of interest cannot be adequately resolved.

RECOMMENDATION 2

The present scattered and uncoordinated statutes relating to conflicts of interest should be consolidated into a single unified Act, with a common set of definitions and a consistent approach. Archaic provisions should be repealed.

One of the principal shortcomings of the present law is that it is composed of many diverse elements scattered throughout the statute books and containing inconsistencies, overlappings and

exemptions. The chaotic nature of the law is an impediment to understanding and a deterrent to recruitment.

The proposed Act would unify the general law of conflict of interest in one comprehensive statute. Basic terms would be defined and then used consistently throughout. Examples of key terms, carefully defined at the outset and then used consistently throughout the proposed Act, include: "Government action"; "transaction involving the Government"; "assist"; "participate"; and "responsibility."

The proposed Act would treat the basic forms of conflict of interest in a logical progression. The first of the six substantive restraints deals with action by a Government employee *in his official capacity* in a matter in which he has a personal interest. The second deals with action by a Government employee *in his private capacity* in furtherance of an interest adverse to the Government. The third deals with receipt of *pay* from outside sources. The fourth deals with receipt of *gifts* from outside sources. The fifth deals with action as a Government official designed to *induce* payments from outside sources. The sixth deals with *post-employment* activities in furtherance of an interest adverse to the Government.

As an example of the close integration of the sections, the second and sixth prohibitions are almost precisely parallel in their application to the intermittent Government employee and the recent former employee, reflecting the basic similarity of the two situations from the conflict-of-interest viewpoint.

The points in the total statutory scheme where it is important to supplement the statutes by regulation are clearly identified.

A few archaic statutory restraints superseded by the new Act would be repealed. Others of the existing statutes would be amended to exclude from their coverage all Executive Branch employees (i.e., those covered by the new Act).

Fourteen special exemptive provisions contained in present law for members of various advisory committees and persons holding other part-time posts would be repealed, as being unnecessary in the light of the realistic approach of the new Act to

the intermittent employee problem. (See Recommendation 6 below.)

Such a unified Act would be more enforceable and more rational in its application. It would, by its very drafting, remedy many of the fundamental shortcomings of the present law.

RECOMMENDATION 3

The restraints contained in the present statutes should be greatly expanded in their scope by making them applicable to essentially all matters in which the public deals with the modern Federal Government.

Six of the seven conflict-of-interest statutes on the books today have their roots in the problems of a century ago; they are directed primarily against corruption in the prosecution of claims against the Government and the process of letting contracts by the Government. Claim prosecution and, to a lesser degree, procurement procedures have, however, been brought largely under control by administrative devices other than the conflict-of-interest statutes. In their places have grown up other risks that the draftsmen of the present statutes did not foresee and provide for. The proposed Act strikes hard at those deficiencies.

The proposed Act would extend the conflict-of-interest restraints to every kind of transaction in which today's Government engages with the private segment of the economy. The term "transaction involving the Government" is broadly defined as "any proceeding, application, submission, request for a ruling or other determination, contract, claim, case or other such particular matter" which will be the subject of Government action. The effect of this broad definition in expanding the scope of the present restraints would be very great.

In this respect Recommendation 3 is consistent with one made by the Justice Department to Congress several years ago in response to a court decision holding that the present post-employment restraints apply only to assisting in the prosecution of

claims against the Government for money or property. In that case an application for a pre-merger clearance ruling from the Antitrust Division of the Justice Department was held not to be a "claim" within the scope of the statute.

The proposed Act would expand present offenses in other respects. To cite a few examples, present law forbids a governmental employee to transact business as an agent of the Government with any *"business entity"* in the pecuniary profits of which he is interested. The comparable rule in the proposed Act would apply not only to business transactions with business organizations, but to any kind of transaction with any kind of entity in which the employee has a substantial economic interest. Furthermore, unlike the present law, the statute specifies a number of specific situations where the employee is deemed to hold an economic interest, such as where that interest is in fact owned by his wife or child, or where he has an understanding as to future employment with a private person or firm.

RECOMMENDATION 4

Certain important restraints now covered in regulations or not at all should be included in the basic statutes, particularly restraints relating to receipt of gifts and coercive use of office.

Present law would be further strengthened by the addition of two important areas of conduct heretofore treated only in regulations or not at all.

The first would forbid an employee of the Government to receive a thing of economic value as a gift, gratuity or favor from anyone who the employee has reason to believe would not give the gift but for the employee's office or position with the Government. Furthermore, regular Government employees would be forbidden to receive gifts or favors from anyone who does business with or is regulated by his agency. Some room is left in the statute for limited exceptions to be provided for in regulations.

The second new offense would forbid a Government employee

to use his office or position with the Government in a manner intended to induce or coerce a person or company doing business with him to provide him with any thing of economic value.

RECOMMENDATION 5

The statutes should permit the retention by Government employees of certain security-oriented economic interests, such as continued participation in private pension plans.

Hallmarks of modern American society are the pension plan, the group insurance plan, and other kinds of security-oriented arrangements. They are the basis of long-range economic planning by millions of individuals and families. Under present conflict-of-interest laws—passed when no such plans existed—there is some doubt whether an employee of the Government may legally continue as a member of some plans maintained by his former employer, at least if contributions to the plan by the employer are regularly made which benefit the Government employee. This overhanging doubt presents a great deterrent to the prospective employee and creates a severe hardship for the non-career employee.

The proposed Act permits Government employees to continue their participation in certain private plans under some circumstances and with adequate safeguards. For example, it would permit a Government employee to remain a member of a pension, group insurance or other welfare plan maintained by his former private employer so long as the employer makes no contribution to the plan on behalf of the former employee who is in Government service. Similarly, a Government employee could continue to belong to certain of these plans even if the former employer does make contributions on his behalf, so long as the plans are qualified under the Internal Revenue Code and so long as the payments by the former employer continue for no longer than five years of Government service.

RECOMMENDATION 6

Wherever it is safe, proper and essential from the viewpoint of recruitment, the statutes should differentiate in treatment between regular employees and citizens who serve the Government only intermittently, for short periods, as advisers and consultants.

To an ever-increasing extent the Government is dependent for information and advice—for learning not only how to do it, but what to do—upon part-time, temporary, and intermittent personnel. These serve individually, or as members of committees, but that service is in addition to their regular private work as scientists, technicians, scholars, lawyers, businessmen and so on. Technically, they are, however brief their service, "employees" of the Government, and at present, all of the conflict-of-interest statutes apply to them. This fact has brought about both refusals to serve and conscious or unconscious ignoring of the statutes by those who do serve. It has also resulted in a welter of special statutory exemptions.

The proposed Act distinguishes, in a few key places where it is safe and proper, between rules for regular full-time Government employees and rules for what are defined as "intermittent employees." Under the proposed Act, an "intermittent employee" is anyone who, as of any particular date, has not performed services for the Government on more than 52 out of the immediately preceding 365 days. The 52-day limit could be increased to 130 days by Presidential order in a narrow class of cases.

For these intermittent employees, there are certain special rules under the proposed Act. For example, regular full-time employees are forbidden to assist private parties for pay in transactions involving the Government; intermittent employees, who have to earn a living in addition to their occasional Government work, are allowed to assist others for pay in such transactions, except in cases where the particular transaction is, or within two years has been, under the intermittent employee's official respon-

sibility or where he participated in the transaction personally and substantially on behalf of the Government.

Similarly, since intermittent employees, by definition, are employed by organizations in addition to the Government, they are not subject to the rule forbidding their Government pay to be supplemented from private sources in return for personal services. Finally, the rules as to receipt of gifts are somewhat different for the two classes of employees.

RECOMMENDATION 7

Regular, continuing and effective enforcement of the law and regulations should be assured by emphasizing administrative remedies, rather than the clumsy criminal penalties of present law.

The basic purpose of a system of conflict-of-interest restraints is to help maintain high ethical behavior in the Executive Branch of the Government. It is the judgment of this Committee that the flexible and multiple weapons of the modern administrative process are more fitted to that day-to-day task than the criminal law.

Because the present statutes rely on criminal sanctions, they are rarely enforced. They are, in many respects, too harsh for offenses they declare. Furthermore, enforcement by criminal law is difficult, expensive and time-consuming. Accordingly, the proposed Act relies for its sanctions, in the first instance, upon ordinary disciplinary procedures, including dismissal. These procedures are supplemented by civil remedies particularly apt for former employees dealing with the particular agency—such as bans against appearances before the agency and civil damage actions.

The proposed Act retains classical criminal penalties for the most flagrant violations: those committed "knowingly" or "purposely." The definitions of these terms are adopted from a draft Model Penal Code prepared by the American Law Institute.

RECOMMENDATION 8

The statutes should create the framework for active and effective administration of the system of conflict-of-interest restraints, headed up with clear responsibility in the President. The President should designate, pursuant to the proposed Act, an Administrator to assist him in this function.

One of the greatest deficiencies in the present statutes is their failure to recognize the importance of a continuing administrative structure to deal with the problem of conflict of interest. The proposed Act would specifically provide for such administrative machinery.

Clear overall responsibility would be placed upon the President "for the establishment of appropriate standards to protect against actual or potential conflicts of interest on the part of Government employees and for the administration and enforcement of this Act and the regulations and orders issued hereunder."

To assist the President in carrying out this responsibility, the Act calls for the designation by him, from within the Executive Office of the President, of an "Administrator." He would be answerable directly to the President. He is given a series of coordinating, consultative and advisory functions under the Act. He would work closely with the Department of Justice and agency heads or their designees, but his would be a small office, and in no sense charged with centralized operation or enforcement of conflict-of-interest restraints.

RECOMMENDATION 9

In addition to the statutes themselves, there should be a "second tier" of restraints, consisting of Presidential regulations amplifying the statutes, and a "third tier," consisting of agency regulations tailored to the needs of particular agencies. The responsibility for day-to-day enforcement of the statutes and regulations should rest upon agency heads.

The proposed Act contemplates the issuance by the President of a set of regulations extending, supplementing, implementing

and interpreting the provisions of the Act. The Act also visualizes another set of regulations at the next lower level—that of the agency heads. The Presidential regulations would take precedence over any regulations issued by agency heads.

Agency regulations would tend to follow the present pattern, namely, particularized rules adapted to the special risks of the particular agency. For example, some agencies may have special rules on use of confidential information available within the agency. Others may adopt special post-employment restraints which go beyond the statutory provision. This diversity and particularization is realistic and desirable.

RECOMMENDATION 10

At all levels of administration potential conflict-of-interest problems should be headed off by preventive action, such as, for example, orientation programs for all new employees to acquaint them with the applicable conflict-of-interest rules, and periodic reminders as to such rules.

Much can be done to fight the conflict-of-interests problem by preventive measures. Section 11 of the proposed statute makes several suggestions. New employees can be required to certify that they have read the conflict-of-interests rules and to report on their outside employment. In particular, an effective orientation program would be helpful. Agents and attorneys appearing before agencies can also be required to file an affidavit stating that they are not, by such appearance, violating any conflict-of-interest law.

RECOMMENDATION 11

There should be more effective prohibitions and penalties applicable to persons outside Government who induce or participate in conduct by Government employees in violation of the conflict-of-interest laws.

Not infrequently a Government employee is found in a conflict-of-interest situation and penalized for it while the person responsible for placing him in the situation remains unscathed.

The proposed Act contains a new and broad section making it a violation for a person to make a payment (or transfer any other thing of economic value) to a Government employee while "believing or having reason to believe that there exist circumstances making the receipt thereof a violation of" certain sections of the Act. This prohibition also covers the making of gifts in the situations corresponding to the situations in which an employee may not receive a gift.

Both administrative and criminal sanctions are applicable to these violations by persons dealing with Government employees.

RECOMMENDATION 12

Each committee of the Senate considering a Presidential nominee for confirmation should be given the benefit of a full analysis, prepared by the Administrator in consultation with the Department of Justice, of any conflict-of-interest problems the nominee's particular situation may present. The confirming committee should give due consideration to this analysis and to the protections afforded by a modern and effectively administered overall scheme of conflict-of-interest restraints, if one is put into effect.

There is substantial evidence that the Government's efforts to recruit top-level executives have been impeded by the requirements of stock divestment imposed by the Armed Services Committee of the Senate.

This problem cannot be dealt with by statute. The confirmation power is a constitutional prerogative. However, this problem should be a subject of joint concern and increased cooperation between the Executive Branch and the Senate. There is some evidence that recently the Executive Departments have taken more pains to prepare their nominees for confirmation. Legal opinions have on occasion been furnished by the Justice Department; plans have been worked out in advance of hearings as to what need be sold and what could be kept, and representatives

of the appointing department or agency confer in advance of hearing with appropriate authorities of the Committee.

If the proposed Act were passed, the "Administrator" would become the central repository for all information concerning conflict-of-interest, and he would be expected to assist the Executive Branch in working out regular procedures for preparing nominees for confirmation. He could, in cooperation with the Department of Justice and general counsel to the agency in question, prepare a full analysis of the conflict-of-interest problems of the particular nominee. Over a period of time, these analyses might be given substantial weight by the confirming committees.

Furthermore, if a modern and effective system of statutory restraints is adopted by Congress and implemented by active Executive Branch administration, the confirming committees might be willing to place greater reliance on the statutory rules and procedures. One clear example is the procedure for disqualification recognized by the proposed Act where a Government official holds a particular economic interest in a private entity.

RECOMMENDATION 13

The Congress should initiate a thorough study of the conflict-of-interest problems of members of Congress and employees of the Legislative Branch of the Federal Government.

Primarily because of their representative function, members of Congress and Legislative Branch employees are, in matters of conflict of interests, in a significantly different position from that of Executive Branch employees. As such, Congress must be considered separately.

A fresh examination of these problems by Congress, or by a group initiated by Congress, is needed. However, such a study should in no way deter immediate action with respect to the Executive Branch along the lines of the proposed Act.